

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: RURAL IOWA INDEPENDENT TELEPHONE ASSOCIATION	DOCKET NO. DRU-04-1
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ORDER DIRECTING RESPONSE TO BOARD QUESTION

(Issued June 22, 2004)

PROCEDURAL BACKGROUND

On May 24, 2004, the Rural Iowa Independent Telephone Association (RIITA) filed with the Utilities Board (Board) a petition for a declaratory order regarding the Board's orders in *Exchange of Transit Traffic*, Docket No. SPU-00-7 (DRU-00-2). RIITA's questions concern the interpretation of three Board orders issued in that docket with regard to payments and reimbursement of fees. The Board's "Proposed Decision and Order," was issued November 26, 2001 (Proposed Decision), an "Order Affirming Proposed Decision and Order" was issued March 18, 2002 (Decision), and "Order Denying Application for Rehearing" was issued May 3, 2002. RIITA states that its petition results from an interpretation given by Qwest Corporation (Qwest) regarding payments made for traffic after April 1999 and Qwest's resulting demands for refunds of alleged overpayments. RIITA states that in Docket No. SPU-00-7, Qwest did not ask the Board for reimbursement of any over-payments made after April 1999.

In its petition, RIITA alleges that Qwest is engaging in self-help by withholding payment from bills submitted to Qwest by the Independent Telephone Companies (ITCs). Qwest is withholding these payments in order to recoup charges it paid on wireless traffic after April 1999 and additional sums based on its attempt to collect these past disputed amounts, according to RIITA.

In its Petition, RIITA asks the Board to issue a declaratory order stating:

1. That the referenced orders do not give Qwest legal authority to be paid for alleged wireless transit traffic delivered to ITCs since April 1999 for which it has already paid.
2. That Qwest's self-help collection efforts are unlawful and should be discontinued for claimed payments over transit traffic delivered between April 1999 and present.
3. That Qwest should return payments it has received for this traffic including payments withheld and payments it coerced the ITCs to pay.
4. That Qwest should discontinue all future self-help assistance efforts with respect to any inter-company compensation issues and pursue action before this Board or in other proper forums instead.
5. Grant such other and further relief that may be proper.

On June 7, 2004, Qwest petitioned to intervene in this proceeding. Qwest states in support of its intervention that it is, and has been, a central and important party throughout the entire controversy and remains so in the instant new proceeding. Qwest points out that in each of the issues laid out by RIITA, Qwest is specifically mentioned and that RIITA seeks Board guidance as to Qwest's conduct. Qwest states that its interests are clearly at odds with RIITA and are unique to Qwest. Qwest states that while it has supported the Board's order in the appellate

courts, the interests of the Board and Qwest are different in that Qwest has millions of dollars at issue in this overall controversy. Qwest states it intends to participate fully in this proceeding. Qwest agrees to be bound by the determinations reached herein, reserving its right to appeal.

Qwest disputes that any "interpretation" of the Board's order is required or appropriate and denies that RIITA's petition is timely. Qwest also disputes that the Board has jurisdiction over matters raised by the RIITA petition, noting that RIITA is the plaintiff and the Board is the defendant in a matter before the federal district court involving the same issues for which RIITA herein seeks interpretation.

In its petition to intervene, Qwest put forward its position to each of the issues RIITA listed in its request for declaratory order as follows:

1. The Board's orders give Qwest authority to be paid. In the "Proposed Decision and Order" in Docket No. SPU-00-7, Finding of Fact 10 states that "INS and the independent telephone companies are not entitled to CEA and access charges from Qwest for CMRS traffic from April, 1999 to the present." Qwest states that the Board was aware that Qwest had made payments to independent companies after April 1999.
2. RIITA's claim that Qwest is engaging in unlawful "self-help" collection efforts over claimed payments for transit traffic delivered between April 1999 to present is an attempt by RIITA to avoid such payments.
3. The request to return payment is RIITA's attempt to reverse the Board's decision in Docket No. SPU-00-7.
4. RIITA's request that the Board direct Qwest to discontinue all future "self-help" assistance efforts with respect to any inter-company compensation issues and pursue action before this Board or in other proper forums instead would presumably prohibit Qwest from engaging in normal business-to-business activity. Qwest states its belief that such a declaration would be instantly the subject of immediate judicial requests to enjoin its

effectiveness. Qwest opined that the Board would not entertain such a consideration and further has no authority to make such an order.

5. No grant of further relief to RIITA is proper. Qwest states that for more than five years it sought to stop RIITA's members from billing Qwest for access on calls not originated by Qwest subscribers. Further, RIITA has urged its members to ignore the Board's orders. RIITA has sought delay and obfuscation at every opportunity, including this most recent filing.

A declaratory order is issued when a person requests the Board to determine the applicability of a statute, rule, or order to a specified set of circumstances.

Pursuant to Iowa Code § 17A.9(5), within 30 days after receipt of a petition for a declaratory order the Board must, in writing, do one of the following:

- a. Issue an order declaring the applicability of the statute, rule, or order in question to the specified circumstances.
- b. Set the matter for specified proceedings.
- c. Agree to issue a declaratory order by a specified time.
- d. Decline to issue a declaratory order, stating the reasons for its action.

The main issue in the petition appears to be interpretation of the Board's orders concerning reimbursement to Qwest of fees it paid after it gave notice in April 1999 that Qwest no longer believed the traffic in question was subject to the ITCs' access tariffs.

After reviewing the petition for declaratory order filed by RIITA and the request for intervention filed by Qwest, it is unclear whether the specific issues raised in this petition are the same issues presented in pending litigation in federal district court.

Therefore, the Board will direct both parties to this preceding to respond to the following question:

Are the issues raised in the petition for declaratory order filed by the Rural Iowa Independent Telephone Association (RIITA) different from the issues currently before the Federal District Court in Case No. 4:02-CV-90348? Please explain in detail how the issues are either the same or different from those being litigated in Federal District Court.

After reviewing the responses, the Board will issue its final determination on the issues raised in the petition for declaratory order.

IT IS THEREFORE ORDERED:

1. The request for intervention filed by Qwest Corporation on June 7, 2004, is granted.
2. The Board directs all parties to respond to the question set forth in this order on or before June 30, 2004.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 22nd day of June, 2004.